Ethnic Communities Council of WA
20 View Street North Perth WA 6006
Phone 92275322 Fax 92275460

Friday, 11 November 2005

Submission to the Senate Enquiry on the Anti Terror Laws (ATL's)

The Ethnic Communities Council of WA would like the following submission to be incorporated into the Senate Enquiry on the new ATL's. Due to the short time frame, the submission is made in point form and we are happy to elaborate on any of the issues via our President, Ramdas Sankaran. We recognise the need for Australia to have legislation in place that is designed to protect the lawful citizens and residents of this country but urge that any legislation that deals with the arrest and detention of residents on the basis of terrorism or purported terror acts needs to have the following characteristics to ensure the basic human rights of residents. Australia is a party to the major international human rights conventions. It is bound by international law to ensure to those in its territory are protected by the fundamental rights and freedoms that are set out in those conventions, in particular the ICCPR. Foremost amongst those rights are the right to liberty, the right not to be subjected to arbitrary arrest or detention (art 9(1)), the right to be told reasons for arrest (art 9(2)) and the right of a detained person "to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful" (art 9(4)).

Our submissions are as follows:

1. Any legislation that allows for detention without charge needs to ensure that adequate legal protections are provided to those detained.
2. During the period of detention, there must be complete and unfettered access to legal representation and advice
3. Any detention must ensure that there is anonymity of detainees. The current situation wherein mainstream media has already characterised the detainees as guilty of sedition or terror is unacceptable in any human rights terms

4. International human rights law requires that a person who is detained must have the right to challenge this detention in a court without delay. Review before the court needs to include: consideration of whether the order is based on a correct understanding of the facts; whether the detention is fair; whether it is reasonably necessary in the circumstances; and whether it is proportionate to the goal of protecting national security
5. Terror related decisions must be made reviewable under the Administrative Decisions Judicial Review Act to ensure that detainees are able to be provided reasons for their detention
6. There is a very concerning aspect of the stop, question and search powers. It is the provision that decisions leading to the exercise of the powers are not reviewable and cannot be challenged on any grounds whatsoever in any legal proceedings.
7. The proposed laws are of the kind that may identify a police state. One of the defining characteristics of a police state is that the police exercise power on behalf of the executive, and the conduct of the police cannot be effectively challenged through the justice system of the state. Regrettably this is what the laws which are currently under debate will achieve.
8. It is our view that this legislation will fail the human rights test, as well as contravene the ICCPR, unless the laws allow access to the courts to subject exercises of the new powers to review on the factual as well as the legal merits.
9. It has been said that the proposed laws are not without precedent and similar measures have been taken in the United Kingdom. However in the UK there is a Human Rights Act, and ultimate access to the European Court of Human Rights. In Australia, there is no Charter of Human Rights, and no machinery for checking how the powers have been exercised unless the new laws permit access to the courts. Access to the courts is not only required by the ICCPR, but is central to Australia's concepts of democracy and the rule of law
10. We support the views of John Von Dousa from HREOC who says the following about the legislation – "To provide a realistic check and balance on orders the legislation needs to incorporate the following safeguards for preventative detention orders, and there needs to be similar rights for the control order regime: "the detained person must have a right to apply to the recognized courts for meaningful review of the factual basis and legal process that has led to the preventative detention order. The courts must be empowered to consider and review the facts. Any review process will be no more than token in value unless the reasons for the making of the order are, at least in broad outline, made known to the detained person. It is a fundamental requirement of natural justice, and of the judicial process, that a person accused be made aware of the allegation that must be answered. A review process to be meaningful to those in detention, particularly if they are unfamiliar with the English language and court processes, must provide legal assistance to bring proceedings to the court; and there must be a statutory obligation on the detaining authority to take positive steps to advise the detained person of these rights, and to facilitate contact with a legal adviser."

The Ethnic Communities Council advocates on behalf of the Ethnic Communities of WA and emphasise that these are troubled times that we live in. The climate of fear that has been generated by these and similar laws is palpable. The disruption to community harmony is

concerning and it is incumbent on governments to restore levels of harmony that existed before these laws are enacted.

Yours faithfully,

RAMDAS SANKARAN, President

ECCWA 20 View Street NORTH PERTH WA 6006